



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/035,215 | 01/04/2002 | Susan H. Woods | WWT-02-001US | 3488 |

7590 05/30/2003
WESTERLUND . POWELL, P.C.
100 Daingerfield Rd., Suite 100
Alexandria, VA 22314-2886

EXAMINER

HAAS, WENDY C

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1661

DATE MAILED: 05/30/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/035,215

Applicant(s)

WOODS ET AL.

Examiner

Wendy C Haas

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 through 17, drawn to a tissue culture method, classified in class 435, subclass 420.
- II. Claims 18, 22 and 23, drawn to a plant, classified in class 800, subclass 298 et al.
- III. Claims 19 through 21, drawn to a plant culture method, classified in class 47, subclass 59R.
- IV. Claims 24-31, drawn to a float-bed apparatus, classified in class 47, subclass 59R.
- V. Claims 32-34, drawn to a method of growing plants using a float-bed, classified in class 47, subclass 59R.
- VI. Claims 35, drawn to a plant tissue culture medium, classified in class 435, subclass 431.
- VII. Claims 36 and 37, drawn to plant tissue culture media, classified in class 435, subclass 431.
- VIII. Claims 38-40, drawn to plant tissue culture media, classified in class 435, subclass 431.

The inventions are distinct, each from the other because of the following reasons:

Inventions VI, VII or VIII and each of I, III or V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown:

- (1) the process for using the product as claimed can be practiced with another materially different product or
- (2) the product as claimed can be used in a materially different process of

Art Unit: 1661

using that product (MPEP § 806.05(h)). In the instant case each claimed medium in groups VI, VII or VIII could be used to grow a different plant than those claimed in groups I, III or V.

Inventions IV and II are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the claimed plants could be made by any one of a number of different means.

Inventions III or V and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the claimed process could be practiced other means or the claimed apparatus could be used to grow plants other than those claimed in groups III or V.

Inventions I, III or V and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the claimed plant could be made by other means.

Inventions I and III or I and V or III and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, each invention has separate utility

Art Unit: 1661

because each invention can be used independently from the other to produce plantlets or plants.

See MPEP § 806.05(d).

Inventions VI, VII and VIII are patentably distinct they are compositions with differing ingredients and requirements. Because these inventions are distinct for the reasons given above and the search required for each group is not required for any other group, restriction for examination purposes as indicated is proper.

Inventions I and IV are unrelated. Inventions IV and VI, VII or VIII are unrelated. Inventions III or V and VIII are unrelated. Inventions II and VI, VII or VIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, inventions I and IV are unrelated because a float bed apparatus is not part of the tissue culture method; invention IV is unrelated to inventions VI, VII and VIII because the float bed apparatus does not require any of the media of groups VI, VII or VIII; inventions III and V are unrelated to invention VIII because the media of group VIII are shoot multiplication media and cannot be used to obtain complete plantlets or to macropropagate plants; the invention of groups II is unrelated to the media of groups VI, VII or VIII because the claimed plant can exist in many forms without any of the claimed media for its support and the claimed media have other uses.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Art Unit: 1661

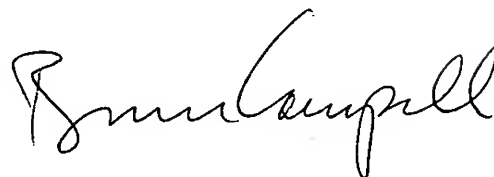
Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C Haas whose telephone number is (703) 308-8898. The examiner can normally be reached on Monday through Friday from 9 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (703) 308-4205. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-3166 for regular communications and (703) 746-3166 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

W. C. Haas

A handwritten signature in cursive script, appearing to read "Bruce Campell".

BRUCE R. CAMPPELL, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600